

Below is an Opinion of the Court.


ELIZABETH PERRIS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF OREGON

In Re:)	
PRAKOPIY CAM,)	Bankruptcy Case No.
)	13-34588-elp7
Debtor.)	
_____)	
UNITED STATES TRUSTEE,)	Adversary No. 13-3318-elp
)	
Plaintiff,)	MEMORANDUM OPINION
)	
v.)	
)	
PRAKOPIY CAM,)	
)	
Defendant.)	
_____)	

The United States Trustee ("UST") filed this complaint to deny debtor a discharge under four sections of § 727(a): failure to keep adequate records; failure to explain satisfactorily the loss or deficiency of assets; false oaths; and concealment, transfer, or removal of assets. Defendant debtor Prakopiy Cam answered, denying the allegations of the complaint and blaming some of his lack of disclosure on his bankruptcy case counsel. At a June 9, 2014, hearing on a motion

1 for protective order filed by debtor's bankruptcy attorney, debtor waived
2 his attorney-client defenses.

3 This case was tried on September 23, 2014, and was continued to and
4 concluded on September 24, 2014. The UST appeared through counsel;
5 debtor appeared pro se. Based on my findings of fact and conclusions of
6 law set out below, I conclude that debtor's bankruptcy discharge will be
7 denied.

8 FACTS

9 Debtor was a berry farmer in the Willamette Valley. He leased three
10 parcels of farm land from his uncle, Pirfil Cam ("Mr. Cam"), and a fourth
11 parcel from a different owner, which were operated as a single large farm
12 ("the Berry Farm").¹

13 In March 2012, debtor also leased a separate 80-acre parcel from a
14 third lessor, which he calls "Berry Empire." Exh. 19.

15 After leasing the Berry Empire property, on May 3, 2012, debtor gave
16 his sister, Anna Snegirev ("Snegirev"), a handwritten note that said
17 debtor could manage both the Berry Empire farm and the Berry Farm for the
18 2012 season and that, "if nothing happens this season," the Berry Farm
19 would be hers for 2013. Exh. 10, p. 106. Debtor and Snegirev² both
20 testified that debtor wanted to give Snegirev the Berry Farm to help her
21

22 ¹ As used in this Opinion, "the Berry Farm" includes all of
23 debtor's interest in the leased property as well as whatever interest he
24 had in assets arising from the business conducted on that property,
including berries, accounts receivables, and the proceeds therefrom.

25 ² Snegirev's testimony was provided via a transcript of her
26 October 30, 2013, Rule 2004 Examination, Exh. 10. She did not provide
any live testimony at the trial.

1 with medical bills resulting from her cancer treatment. Snegirev lived
2 in Lincoln City and had a job there; she had not been involved in
3 operating the farm before 2012 and began learning the business during the
4 2013 season. She understood that the farm was leased from their uncle,
5 and that there was a lot of debt related to the farming operation.

6 Debtor managed the Berry Farm during 2012 and 2013. In early 2013,
7 debtor and Snegirev agreed that debtor would be paid a salary of \$2,400
8 per month for his work on the Berry Farm. Snegirev testified that she
9 viewed 2013 as a transition period during which the Berry Farm would be
10 transferred to her.

11 Debtor continued to operate the Berry Farm as he had before,
12 including dealing with berry processors and other third parties, in his
13 own name. Snegirev did not open bank accounts in her name for the Berry
14 Farm or register with the Oregon Secretary of State. Snegirev's name did
15 not appear on any of the business records, neither she nor debtor
16 informed their uncle that she was the owner of the Berry Farm and debtor
17 did not inform any other third parties that Snegirev was the owner of or
18 involved with the Berry Farm. Checks for proceeds of berry sales from
19 the Berry Farm were issued in debtor's name and either cashed by him or
20 deposited into his personal bank accounts. Snegirev did not receive any
21 payments from Berry Farm proceeds before the petition date.

22 Debtor failed to pay at least a portion of the rent owed to Mr. Cam,
23 and by June 2013, he was in arrears approximately \$45,000. Exh. 16. On
24 June 18, 2013, debtor agreed to give Mr. Cam a security interest in berry
25 receipts from the Berry Farm. Under that agreement, debtor was required
26 to give Mr. Cam half of any berry crop proceeds until the rent arrears

1 were paid in full, and all checks and proceeds from the sale of berries
2 were to be paid jointly to debtor and Mr. Cam. Id.

3 In August 2013, debtor received a check for \$29,000 from a berry
4 processor, issued jointly to debtor and Mr. Cam. When debtor and Mr. Cam
5 could not come to agreement about who was entitled to the proceeds
6 (debtor denied that any of the proceeds belonged to Mr. Cam), debtor
7 cashed the check without Mr. Cam's signature by having his girlfriend
8 provide the second signature.

9 Between the time of the security agreement with Mr. Cam and debtor's
10 bankruptcy, debtor made two payments to Mr. Cam for the leases, for
11 \$9,897.86 and \$3,307.18. Exh. 20.

12 Despite the fact that debtor was planning to transfer the Berry Farm
13 to Snegirev, in March 2013, debtor entered into a sublease with Efim
14 Chernishoff of one of the parcels of the Berry Farm that was leased from
15 Mr. Cam. Exh. 21. This is one of the parcels that was subject to the
16 crop proceeds security interest debtor granted to Mr. Cam a month later.
17 Debtor did not ask Mr. Cam for permission to sublease the property, nor
18 tell him about it. Snegirev's name does not appear in any capacity on
19 the sublease.

20 In June 2013, debtor signed a Credit and Security Agreement with
21 Columbia Fruit, LLC, a berry processor, to get a \$20,000 crop advance,
22 giving a security interest in his "2013 Blackberry Crop." Exh. 25. The
23 Credit and Security Agreement included debtor's representation that he
24 was the sole owner of the collateral. Snegirev's name was not on the
25 Credit and Security Agreement, nor did she sign it. He testified that
26

1 the loan was not for the Berry Empire crop³ and that he represented that
2 he owned the collateral in order to get the loan. I conclude that the
3 berry crop referred to in the security agreement included the blackberry
4 crop from the Berry Farm.

5 Checks from berry processors in 2013 continued to be issued solely
6 to debtor or to debtor and Mr. Cam jointly. None of the 2013 checks for
7 berries from the Berry Farm included Snegirev's name.

8 Debtor did not maintain any bookkeeping or other business records
9 system. The UST's analyst reviewed all of debtor's bank records and
10 other documents provided in an attempt to determine debtor's financial
11 transactions in 2013 and 2014. She found that, between January 15, 2013,
12 and the petition date of July 18, 2013, debtor deposited berry processor
13 checks into his bank accounts in the amount of \$76,926,⁴ and cashed
14 checks from processors in the amount of \$40,705. Exh. 54. He received
15 \$20,000 from Chernishoff for the sublease in March 2013. Exh. 55. Thus,
16 the records show that he had received funds from his business during that
17 period totaling \$137,631.

18 The bank records also show that debtor had total deposits into his
19 bank accounts during that same time of \$153,683. Exh. 56 at p.8. The
20 difference between business receipts and total deposits results from a
21 number of deposits of cash that came from unknown sources as well as some
22

23 ³ Although debtor had by this time leased the Berry Empire
24 property, he testified that the berry crop on that property was immature
25 and it was not clear whether there would be a crop from Berry Empire that
could be harvested in 2013.

26 ⁴ This does not include a check for \$5,001.34 that was dated July
8, 2013, but deposited post-petition on July 19, 2013.

1 other payments from sales of property.

2 Debtor's records show business expenses of \$84,653.13, made up of
3 \$34,620.33 expenses paid through his bank accounts and \$50,032.80 cash
4 wages paid to workers, between January 1 and July 18, 2013. Exh. 60;
5 Exh. 57 at p.6. The records also show that debtor paid personal expenses
6 of \$6,730 from his bank accounts.

7 In the prepetition period of 2013, the records show that debtor had
8 \$147,113 in cash, made up of cash withdrawals from his bank accounts,
9 cashed payments from berry processors, and other unidentified cash. Exh.
10 65. Subtracting the \$50,032 cash that was used to pay payroll for the
11 prepetition period of 2013 leaves \$97,081. There are no records showing
12 what happened to the \$97,081 in cash. Debtor listed \$72 cash on hand in
13 his Schedule B. Exh. 3.

14 In the post-petition period from July 19, 2013, to September 25,
15 2013, debtor cashed and deposited checks from berry processors in an
16 amount of \$106,191.18. Exh. 54.⁵ His records show business expenses of
17 \$12,187.18 during the same period. Exh. 58.⁶ This leaves \$94,004.00 in
18 net income during that post-petition period, some of which is shown to
19 have been used for debtor's personal expenses. Debtor could not account
20 for the remainder of the receipts. Debtor listed \$0 accounts receivable
21 on his bankruptcy schedules, saying that the accounts receivable belonged
22

23 ⁵ This includes the prepetition check of \$5,001.34 that was
24 deposited post-petition.

25 ⁶ Exhibit 58 includes expenses through April 30, 2014. I
26 calculated the expenses for the same period as the period used for
calculating income, July 19 through September 25, 2013.

1 to his sister Snegirev. Under "crops," he listed berries with a value of
2 \$0.

3 The records show postpetition payments to Snegirev totaling \$1,250.
4 Exh. 58 at p.2. In addition, Snegirev took two cash draws in 2013
5 totaling \$200. Exh. 10 at pp. 41-42; 164. Debtor represented to
6 Snegirev that the remainder of the berry income from the Berry Farm had
7 been used for paying workers and other farming expenses. Exh. 10 at
8 p.27, 29, 31. Snegirev knew that debtor had a bank account at Wells
9 Fargo where he deposited berry checks; she did not know that he also had
10 a Columbia Bank account. In 2013 before he filed bankruptcy, debtor
11 deposited more than \$100,000 into the Columbia account, including berry
12 proceeds and sublease income,. Exh. 10 at p.31-32; Exh. 56.

13 After debtor filed his petition, the Chapter 7 trustee received a
14 total of \$80,049 in proceeds from debtor's crops.

15 In debtor's bankruptcy schedules, he disclosed that he owned a 1993
16 Infinity J-30, a 1995 Dodge Ram, a jet ski, a Littau berry harvester, a
17 mower/tiller, and some hand tools. Exh. 3 at p.10. In his Statement of
18 Financial Affairs ("SOFA"), he disclosed that he was holding a Ford F450
19 for his father, Visily Cam, and that he had sold a 2006 Toyota Tacoma to
20 his nephew, Dimyan Snegirev, on April 30, 2013. Id. at pp.26-27.

21 In May 2012, debtor represented in a credit application that he
22 owned a number of pieces of farm equipment as well as a number of trucks
23 and three cars. Exh. 38 at pp.9-10. These included the Ford F450 that
24 he represented in his SOFA belonged to his father, the 1995 Dodge diesel,
25 the 2006 Toyota Tacoma, the 1993 Infinity, and the Jetski that were
26 disclosed on his bankruptcy schedules. However, he also represented that

1 he owned a 2007 McCormick Tractor, a 2009 McCormick Tractor, five
2 rototillers, three mowers, a Morgan Tilt Bed Trailer, a 2007 Chevy
3 Duramax Flatbed, a 2005 Chevy Duramax Flatbed, a 1995 Freightliner Reefer
4 Truck, a 10 ft. Reefer Trailer, a 1997 Plymouth Voyager, a 2006 Ford
5 Escape Hybrid, and a John Deere Riding Mower. Id. None of those were
6 listed on his bankruptcy schedules.

7 Debtor testified that, other than the items that he listed as assets
8 on his bankruptcy schedules, the remainder of the equipment and vehicles
9 listed on the 2012 credit application did not belong to him but instead
10 belonged to various family members. He overinflated his assets on the
11 credit application to assure that he would be able to get the credit that
12 he was seeking. Debtor signed the credit application under an
13 acknowledgment that the application was true and correct. Id. at p.11.

14 Despite debtor's denial that the equipment belongs to him, the UST
15 established that debtor insures the two Chevy Duramax Flatbeds, the Ford
16 F450, and the 1995 Freightliner Reefer Trailer. Exh. 41, 43, 44, 45.
17 The Ford F450 is titled in his, not his father's, name. Exh. 47. Debtor
18 testified that he insures some vehicles for family members who have
19 difficulty obtaining affordable insurance in their own names because of
20 records of driving under the influence of intoxicants. He also testified
21 that he sometimes purchases vehicles or equipment in his own name for his
22 father, because his father does not speak English very well.

23 In May 2013, debtor sold a Hyster 3000 forklift. Exh. 23. In April
24 2013 he sold the Toyota Tacoma to his nephew, Dimyan Snegirev. Exh. 52.
25 In April 2014, he sold one of the McCormick tractors for \$18,500. Exh.
26 36. The sale of the Toyota Tacoma was disclosed; the other sales were

1 not.

2 In early July 2013, farm workers who had obtained a May 2013
3 \$163,716 judgment against debtor in federal district court for wage and
4 hour violations issued a writ of garnishment to one of debtor's berry
5 processors for collection of the judgment they had obtained against him.
6 Exh. 13, 22.

7 Debtor filed bankruptcy on July 18, 2013. Debtor's schedules
8 disclosed the following: that he had \$72 in cash; that he had one bank
9 account, which was at Wells Fargo; that he had no accounts receivable,
10 because the receivables belonged to Snegirev but were issued in debtor's
11 name; that he had monthly income of \$2,400; that he had received
12 approximately \$7,800 in wages in 2013; and that he had transferred
13 leases, crops, and the farming operation to Snegirev in May 2013. Exh.
14 3. Debtor's testimony at the § 341(a) meeting and the Rule 2004 exam was
15 substantially consistent with the information contained in the bankruptcy
16 documents.

17 Debtor has not filed a tax return since 2009. He testified at his
18 Rule 2004 examination that he does not really maintain a lot of financial
19 records for the business. Debtor deals largely in cash, and he does not
20 have financial records to show or an explanation for where all of the
21 cash went, other than to say that it went for business expenses.

22 DISCUSSION

23 The UST brings seven claims under four sections of § 727(a). The
24 UST has the burden of producing evidence that supports each claim; once
25 the UST produces that evidence, "the debtor cannot prevail if he fails to
26 offer credible evidence after the creditor makes a prima facie case." In

1 re Devers, 759 F.2d 751, 754 (9th Cir. 1985). Accord In re Aubrey, 111
2 B.R. 268, 273 (9th Cir. BAP 1990). The seven claims are in the
3 alternative. Debtor's discharge will be denied if the UST prevails on
4 any one claim.

5 1. Alleged transfer of the Berry Farm

6 A number of the claims or allegations within the claims involved
7 debtor's testimony that he transferred the Berry Farm to his sister in
8 2012,⁷ which was more than a year before bankruptcy, and his assertion
9 that, because the business had been transferred and did not belong to
10 him, many of the assets and liabilities about which the UST complains, in
11 particular with regard to failure to disclose assets or liabilities, were
12 not his and therefore he did not have to report them.

13 The evidence shows that, in 2012, debtor decided to transfer the
14 Berry Farm to his sister, and he wrote her a note to that effect. Exh.
15 12 at p.106. He and Snegirev intended that debtor would continue to run
16 the business in 2013, using that berry season as a time to train Snegirev
17 in the business and transition the business to her.

18 The evidence also shows that neither debtor nor Snegirev ever did
19 anything to accomplish the transfer of the business. Snegirev became
20 minimally involved in the business operations and she received a small
21 payment from the Berry Farm berry proceeds in 2013. All transactions
22 with third parties continued as they had before, with debtor running the
23

24 ⁷ Debtor testified that the date of the transfer listed on his
25 bankruptcy schedules of 2013 was a mistake, because he transferred the
26 Berry Farm to Snegirev in 2012. I do not find the discrepancy in dates
significant, because I find that debtor did not in fact transfer the
Berry Farm.

1 Berry Farm, dealing with third party processors, and receiving berry
2 proceeds payments in his name. Neither Snegirev nor debtor told their
3 uncle, the lessor of most of the Berry Farm property, that debtor was
4 transferring the business to Snegirev. Neither Snegirev nor debtor told
5 the berry processors that Snegirev was the owner of the Berry Farm.
6 Snegirev never opened any bank accounts in her name for the business, nor
7 registered as owner of the Berry Farm with the Secretary of State. To
8 third parties who dealt with debtor in relation to the Berry Farm,
9 nothing had changed.

10 Debtor's and Snegirev's testimony was that debtor intended to give
11 the Berry Farm to Snegirev. Snegirev was not required to provide any
12 consideration for the transfer. Therefore the question is whether debtor
13 made a gift of the Berry Farm to Snegirev.

14 Under Oregon law, a gift of personal property requires donative
15 intent, delivery of the property to the recipient with the intent that
16 the recipient have a present interest in the property, and acceptance by
17 the recipient. Kesterson v. Cronan, 105 Or. App. 551, 554 (1991).

18 I find that debtor intended to transfer the Berry Farm to Snegirev,
19 and that he intended to use the 2013 berry season as a time to train
20 Snegirev in the business and to transition the Berry Farm from him to
21 her. Donative intent, however, is not sufficient to complete a gift. By
22 the time debtor filed his bankruptcy petition, he had not delivered the
23 Berry Farm to Snegirev with the intent that she have a present interest
24 in it. Neither debtor nor Snegirev did anything to accomplish the
25 transfer. The fact that Snegirev received nominal payments from Berry
26 Farm berry proceeds in 2013 and had started to learn the business are not

1 substantial enough, given the lack of any other indicia of a completed
2 transfer, to demonstrate that the Berry Farm had been delivered to her.
3 I conclude that when debtor filed his bankruptcy petition, the Berry Farm
4 had not been transferred to Snegirev and debtor continued to own it and
5 its profits.

6 Debtor maintained throughout this case that the Berry Farm was being
7 transferred, and that he did not view it as belonging to him. He also
8 acknowledged, however, that he had done nothing to actually effectuate
9 the transfer legally, other than provide minimal payment to Snegirev and
10 begin to train her in the operation of the business. Therefore, I
11 conclude that, despite debtor's intent to make a transfer, he knew that
12 he had not actually transferred the Berry Farm to Snegirev, and he knew
13 that the Berry Farm belonged to him on the petition date, not to
14 Snegirev.

15 I will now turn to the UST's claims. The UST alleged seven claims,
16 all seeking denial of debtor's discharge. If she prevails on any one
17 claim, debtor's discharge will be denied. Given that the claims are
18 alternative bases for denial of discharge, and because I find that the
19 UST prevails on three of the claims, I will provide detailed findings and
20 conclusions on only those three claims and need not rule on the other
21 four claims.

22 2. False statements on bankruptcy documents (Claim #1)

23 The UST's first claim alleges that discharge should be denied under
24 § 727(a)(4)(A) because debtor knowingly and fraudulently made false
25 statements in his bankruptcy documents.

26 Section 727(a)(4)(A) provides that the debtor shall get a discharge

1 unless the debtor has knowingly and fraudulently made a false oath or
2 account in connection with the case. The purpose of this provision "is
3 to insure that the trustee and creditors have accurate information
4 without having to conduct costly investigations." In re Wills, 243 B.R.
5 58, 63 (9th Cir. BAP 1999).

6 To deny a debtor a discharge under this section, the plaintiff must
7 show that "(1) the debtor made a false oath in connection with the case;
8 (2) the oath related to a material fact; (3) the oath was made knowingly;
9 and (4) the oath was made fraudulently." In re Roberts, 331 B.R. 876,
10 882 (9th Cir. BAP 2005), aff'd, 241 Fed.Appx. 420 (2007) (unpublished).
11 "A false statement or an omission in the debtor's bankruptcy schedules or
12 statement of financial affairs can constitute a false oath." In re
13 Khalil, 379 B.R. 163, 172 (9th Cir. BAP 2007), aff'd, 578 F.3d 1167 (9th
14 Cir. 2009); In re Beaubouef, 966 F.2d 174 (5th Cir. 1992).

15 A false statement is material if it relates "to the debtor's
16 business transactions or estate, or concerns the discovery of assets,
17 business dealings, or the existence and disposition of the debtor's
18 property." Wills, 243 B.R. at 62; In re Chalikh, 748 F.2d 616, 618 (11th
19 Cir. 1984). "[A] discharge may be denied if the omission adversely
20 affects the trustee's or creditors' ability to discover other assets or
21 to fully investigate the debtor's pre-bankruptcy dealing and financial
22 condition.'" Id. at 63 (quoting 6 Lawrence P. King et al., Collier on
23 Bankruptcy ¶ 727.04[1][b] (15th ed. Rev. 1998)).

24 "A debtor 'acts knowingly if he or she acts deliberately and
25 consciously.'" Khalil, 379 B.R. at 173.

26 To show fraudulent intent, the plaintiff must show that debtor (1)

1 made representations (2) when he knew they were false, and (3) he made
2 them with the intent to and for the purpose of deceiving creditors. In
3 re Retz, 606 F.3d 1189, 1198-1199 (9th Cir. 2010). Fraudulent intent may
4 be inferred from the actions of the debtor, In re Devers, 759 F.2d 751,
5 753-54 (9th Cir. 1985), or from the surrounding circumstances.

6 [M]ultiple omissions of material assets or information may well
7 support an *inference of fraud* if the nature of the assets or
8 transactions suggests that the debtor was aware of them at the time
9 of preparing the schedules and that there was something about the
10 assets or transactions which, because of their size or nature, a
debtor might want to conceal.

10 Khalil, 379 B.R. at 175 (emphasis in original).

11 The UST alleges that debtor knowingly and fraudulently made a number
12 of false statements in his bankruptcy schedules and Schedule of Financial
13 Affairs ("SOFA"). Debtor does not deny that he made the representations
14 or omissions, but argues either that the representations were true or
15 that there is an explanation for the representations or omissions.

16 I agree that a number of the statements contained in debtor's
17 bankruptcy schedules and SOFA were knowingly false, and that debtor
18 knowingly omitted required information.

19 In his SOFA, debtor represented that in May 2013, he transferred
20 leases, crops, and the farming operation of the Berry Farm to his sister,
21 Snegirev. Exh. 3 at p.26. As I explained earlier in this opinion,
22 debtor's representation that he had transferred the Berry Farm to
23 Snegirev was false. Although debtor intended to transfer the Berry Farm,
24 he had not done anything to accomplish the transfer as of the petition
25 date, and he knew it. Therefore, I conclude that his statement that the
26 Berry Farm had been transferred was knowingly false.

1 Debtor failed to disclose on Schedule B his ownership of the Berry
2 Farm. Also on Schedule B, he valued the accounts receivable at \$0, when
3 in fact he received tens of thousands of dollars in proceeds from the
4 2013 Berry Farm crop. Because debtor knew that he had not actually
5 transferred the Berry Farm, these were also knowingly false statements.

6 Debtor also omitted his interest in the Berry Empire on Schedule B
7 and the SOFA, and failed to disclose on the SOFA the undisputed fact that
8 he had an interest in the Berry Farm within six years of the petition
9 date. Exh. 3 at p.28. He provided no explanation for these omissions.
10 Debtor knowingly omitted that information, which is a false statement.

11 Debtor failed to disclose on Schedule B the improvements he had made
12 to the Berry Farm, including posts and wires. Debtor's only explanation
13 for the omission was that he had sold posts that had been given to him by
14 family members, and that such sale was not illegal.

15 Because debtor knew that he had not transferred the Berry Farm to
16 Snegirev, his failure to disclose the improvements to the Berry Farm
17 properties was a knowingly false statement.

18 The UST argues that debtor falsely listed his income in Schedule I
19 as \$2,400 per month, and in his SOFA falsely showed income for the
20 prepetition period of 2013 as \$7,800. Although debtor and Snegirev had
21 agreed in spring of 2013 that debtor would receive a monthly salary of
22 \$2,400 in 2013, in fact debtor received tens of thousands of dollars in
23 cash from the proceeds of the Berry Farm in 2013.

24 Debtor knew that he had not transferred the Berry Farm to Snegirev.
25 Although he had an understanding with her for a monthly salary, in the
26 absence of a transfer of the Berry Farm, the income he received came from

1 the farm, not from the salary. His statement that he had a monthly
2 income of \$2,400 per month and had received \$7,800 in 2013 was knowingly
3 false.

4 The UST also relies on debtor's omissions in his schedules of
5 creditors the IRS and Chernishoff, to whom debtor had subleased some of
6 the farm property. Debtor neither listed the sublease to Chernishoff on
7 Schedule G, nor any debt owed to Chernishoff on Schedule F. Debtor's
8 explanation was that the sublease with Chernishoff had been nullified by
9 Pirfil Cam's attempts to sell the leased property, and that he did not
10 list the IRS because he did not think that he owed any taxes at the time
11 he filed his schedules.

12 The evidence demonstrates that debtor entered into a sublease with
13 Chernishoff, Exh. 21, and that Chernishoff paid debtor a total of \$20,000
14 in March 2013. Despite debtor's argument that the sublease had been
15 nullified, there was no evidence that he had paid Chernishoff back for
16 the lease payment. Thus, if debtor had been truthful on his schedules he
17 would have done one of two things. Either he would have included a
18 prepetition debt to Chernishoff on Schedule F or he would have listed the
19 unexpired lease with Chernishoff on Schedule G. He knowingly did
20 neither. His omission of Chernishoff was a knowingly false statement.

21 The evidence also shows that debtor withheld taxes from employees'
22 wages in 2013, but there was no evidence that he had paid any of the
23 withheld taxes to the taxing authorities. Thus, I infer that there are
24 employee taxes owing for 2013, making debtor's omission of the IRS false.
25 I also infer that debtor knew that there were employee taxes owing for
26 2013 that he failed to list on his schedules, based on the fact that he

1 had collected those taxes and not paid them over to the taxing
2 authorities. His failure to list the debt to the IRS was knowingly
3 false.

4 The UST alleges other knowing, false statements in the bankruptcy
5 documents. Because the knowingly false statements listed above are
6 sufficient to deny debtor's discharge under § 727(a)(4)(A), I need not
7 address every single allegation.

8 The false statements were material; they related to debtor's
9 business transactions and assets of the estate.

10 I conclude that the false statements were fraudulently made. The
11 sheer number of knowing, false statements and omissions supports a
12 finding of fraud. The assets and liabilities that were omitted were the
13 type of business information that a debtor might want to conceal.

14 Fraudulent intent is also supported by evidence of other false
15 statements and omissions, as well as by debtor's general lack of honesty
16 in deceiving third parties in order to obtain financial benefits for
17 himself or his family.

18 Debtor disclosed accounts at only one bank on his bankruptcy
19 documents: Wells Fargo. However, in fact he also had an account in his
20 name at Columbia Bank, through which he ran tens of thousands of dollars
21 of transactions. He testified that he did not list the Columbia Bank
22 account on the bankruptcy schedules because that account was used for
23 Snegirev's business, and did not belong to him. However, he did not
24 disclose the account to Snegirev, he did not inform the bank that the
25 account belonged to Snegirev and not to him, nor did he disclose on his
26 schedules that he was holding funds in that account for a third party.

1 Debtor attempts to explain his omissions and misstatements as either
2 misunderstandings about the law or innocent errors. However, it is clear
3 from his testimony that debtor was not truthful in his business and
4 bankruptcy dealings, but instead knowingly made whatever representations
5 -- true or not -- that were necessary to get what he wanted. For
6 example, he listed numerous vehicles on an application for credit,
7 representing that they belonged to him, when he now says that many of
8 them actually belonged to family members. He explained that the knowing
9 misrepresentation was intended to allow him to obtain credit. Similarly,
10 he made representations in applications for vehicle insurance that he
11 owned the insured vehicles, when he now testifies that in fact he did not
12 own them. These events demonstrate that debtor's approach to
13 truthfulness in his business dealings was extremely loose, and that
14 approach continued in his bankruptcy case. The very purpose of those
15 misrepresentations was fraudulent: to induce reliance on them so that
16 debtor could get what he or his family members wanted or needed.

17 In our bankruptcy system, full and frank disclosure is absolutely
18 critical. If debtor seeks the benefits of the bankruptcy system, he also
19 must abide by the obligations that the system demands. The purpose of
20 § 727(a)(4)(A) is to make sure "that the trustee and creditors have
21 accurate information without having to conduct costly investigations."
22 In re Wills, 243 B.R. 58, 63 (9th Cir. BAP 1999). Debtor's argument that
23 the trustee could have ascertained his business transactions and income
24 had he conducted sufficient investigation belies the purpose of the
25 disclosure requirements of the Bankruptcy Code. It is the debtor's
26 obligation to provide full and truthful disclosure about his financial

1 condition, not the trustee's burden to conduct time-consuming and
2 burdensome investigation of that condition.

3 I conclude that debtor made knowing and false oaths or accounts in
4 connection with the case by both omitting assets and liabilities and
5 misrepresenting his financial condition. Therefore, I will deny his
6 discharge under § 727(a)(4)(A) based on the UST's Claim #1.

7 3. Failure to keep adequate records (Claim #6)

8 Under § 727(a)(3), a discharge will be denied if "the debtor has
9 concealed, destroyed, mutilated, falsified, or failed to keep or preserve
10 any recorded information, including books, documents, records, and
11 papers, from which the debtor's financial condition or business
12 transactions might be ascertained, unless such act or failure to act was
13 justified under all of the circumstances of the case[.]" This provision
14 makes the debtor's "discharge dependent on the debtor's true presentation
15 of his financial affairs." In re Caneva, 550 F.3d 755, 761 (9th Cir.
16 2008).

17 The debtor must present sufficient written evidence that will enable
18 creditors "reasonably to ascertain . . . [the debtor's] business
19 transactions for a reasonable period in the past." In re Cox, 904 F.2d
20 1399, 1402 (9th Cir. 1990). Accord Caneva, 550 F.3d at 761.

21 The plaintiff makes out a prima facie case by showing "(1) that the
22 debtor failed to maintain and preserve adequate records, and (2) that
23 such failure makes it impossible to ascertain the debtor's financial
24 condition and material business transactions." Meridian Bank v. Alten,
25 958 F.2d 1226, 1232 (3d Cir. 1992) (quoted with approval in Caneva, 550
26 F.3d at 761).

1 Once the plaintiff makes a showing that the debtor's records are
2 inadequate, the burden shifts to debtor "to justify the inadequacy or
3 nonexistence of the records." Caneva at 761 (quoting Cox, 41 F.3d at
4 1296); Meridian Bank, 958 F.2d at 1233. The debtor's justification will
5 be measured against what a reasonable person would do under similar
6 circumstances and will be evaluated in light of the education,
7 experience, and sophistication of the debtor, the nature and extent of
8 the debtor's business, and the amount of credit extended to the debtor.
9 Meridian Bank, 958 F.2d at 1231.

10 The UST alleges that debtor failed to keep or preserve information
11 from which his financial condition or business conditions might be
12 ascertained, and that his failure was not justified under the
13 circumstances of this case.

14 The evidence presented at trial established that debtor failed to
15 keep adequate records from which his financial condition and business
16 transactions could be ascertained. The only records debtor had were his
17 bank statements and some records showing wage payments to workers. The
18 UST showed that much of debtor's business was conducted in cash,
19 including making cash payments to his workers. The bank records show
20 that, although debtor deposited some of the berry proceeds checks into
21 his bank accounts, he also cashed many of those checks or took large cash
22 withdrawals from some deposits. He did not keep any records of what
23 happened to that cash, other than some records showing payments of
24 \$50,032 to his workers. Of the \$147,113 cash that the UST could show
25 went into debtor's hands, there was \$97,081 in cash that was unaccounted
26 for during the six-month prepetition period in 2013.

1 Debtor ran a business that employed a number of seasonal workers and
2 generated a significant amount of income. Yet he failed to maintain any
3 type of record keeping system for the business. He dealt in large
4 quantities of cash, and had no records to show what happened to much of
5 that cash. The lack of business records makes it impossible to know
6 whether his testimony that most of the income went to pay business
7 expenses is true, or in any way to determine debtor's financial condition
8 and business transactions.

9 Because the UST has shown that debtor failed to maintain adequate
10 records, and that the failure makes it impossible to determine debtor's
11 financial condition and business transactions, the burden shifts to
12 debtor to justify the lack of records. Debtor did not provide any
13 justification for his failure to keep adequate records. Although he
14 testified that the money received in 2013 belonged to his sister, I have
15 found that debtor knew that the Berry Farm had not been transferred to
16 Snegirev prepetition. Debtor therefore knew that the income did not
17 belong to her. Even if the business had been transferred to Snegirev,
18 processors paid debtor for the berries, not Snegirev. Debtor did not
19 keep any records of berry proceeds that he received, whether they
20 belonged to him or to Snegirev. In addition, debtor did not maintain or
21 provide any records of the business for 2012 or before, during a time
22 when it is undisputed that debtor owned the business.

23 A reasonable person would maintain records of payments of business
24 and personal expenses, including records to show the disposition of tens
25 of thousands of dollars of cash. Debtor was not new to the berry
26 business. His business generated substantial income. His lack of

1 education does not justify his failure to keep any records to demonstrate
2 the disposition of the large amounts of cash that went through his hands.

3 Debtor failed to maintain business records to show what happened to
4 large quantities of cash. He has not justified his failure to keep
5 adequate records. Therefore, his discharge will be denied under
6 § 727(a)(3).

7 4. Failure to explain loss or deficiency of assets (Claim #7)

8 The UST also alleges that debtor's discharge should be denied under
9 § 727(a)(5), which provides that discharge will be denied if the debtor
10 has failed to explain satisfactorily any loss of assets or deficiency of
11 assets to meet the debtor's liabilities. The

12 objecting party bears the initial burden of proof and must
13 demonstrate: (1) debtor at one time, not too remote from the
14 bankruptcy petition date, owned identifiable assets; (2) on the date
15 the bankruptcy petition was filed or order of relief granted, the
debtor no longer owned the assets; and (3) the bankruptcy pleadings
or statement of affairs do not reflect an adequate explanation for
the disposition of the assets.

16 In re Retz, 606 F.3d 1189, 1205 (9th Cir. 2010) (quoting In re Wright,
17 364 B.R. 51, 79 (Bank. D. Mont. 2007)). In establishing that the debtor
18 failed satisfactorily to explain a loss of assets, the plaintiff need not
19 prove the debtor's intent to conceal. In re Ridley, 115 B.R. 731, 735
20 (Bank. D. Mass. 1990). Rather, once the plaintiff has established a loss
21 of assets, the debtor must explain the loss. See In re Deers, 759 F.2d
22 751, 754 (9th Cir. 1985). Vague and indefinite explanations of losses
23 that are based on estimates uncorroborated by documentation are generally
24 unsatisfactory. In re Chalk, 748 F.2d 616, 619 (11th Cir. 1984).

25 The UST argues that, prepetition, debtor had access to substantial
26 amounts of cash, and that he has not been able to account for the

1 disposition of those large amounts of cash. In addition, debtor listed
2 in 2012 substantial farm equipment on a personal balance sheet, and he
3 has not explained what happened to that equipment.

4 As I explained above, in the six months before filing his petition,
5 debtor received \$147,113 in cash. He has been unable to account for
6 \$97,081 of it. When he filed his petition, he listed \$72 in cash on his
7 schedules. There was no evidence that he actually had more than the \$72
8 in cash that he reported. Therefore, the UST has shown that, in a period
9 not too remote from the bankruptcy filing, debtor had substantial
10 identifiable assets, and that, on the date of filing, he no longer had
11 those assets.⁸

12 Debtor has not been able to adequately explain what happened to that
13 large amount of cash. His vague, uncorroborated explanation that the
14 cash was used to pay business expenses is not sufficient to explain the
15 disposition of the assets. To the extent he claims that the cash
16 belonged to his sister and not to him, I have already found that debtor
17 had not actually transferred the Berry Farm to Snegirev prepetition, and
18 the income from that farm belonged to debtor, not to her.

19 Debtor's discharge will be denied under § 727(a)(5).

20 5. Other claims (Claims #2, 3, 4, 5)

21 Because the court has determined that debtor's discharge should be
22 denied based on three independent grounds, i.e. debtor's failure to keep
23

24 ⁸ As for the farm equipment, debtor testified that it did not
25 belong to him. Because the lack of explanation for what happened to the
26 large quantities of cash is sufficient to deny debtor a discharge under
this section, I need not determine whether in fact the items of equipment
were assets the loss of which debtor failed to explain satisfactorily.

1 or preserve records from which his financial condition or business
2 transactions may be ascertained, his failure to explain the loss or
3 deficiency of assets to meet his liabilities, and his knowing, fraudulent
4 false oaths in his bankruptcy documents, I need not consider the
5 remainder of the UST's claims.

6 CONCLUSION

7 Debtor's discharge will be denied. The UST should prepare the
8 judgment denying debtor his discharge.

9 ###

10 cc: Carla McClurg
11 Prakopiy Cam
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